

Paper No. \_\_\_\_\_

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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FUJITSU SEMICONDUCTOR LIMITED and FUJITSU SEMICONDUCTOR  
AMERICA, INC.  
Petitioner

v.

ZOND, LLC  
Patent Owner

Case IPR2014-00866  
U.S. PATENT NO. 6,853,142  
CLAIMS 1, 3-10, 12, 15, 17-20, 42  
Title: Methods and apparatus for generating high-density plasma

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**PETITIONER'S REVISED MOTION FOR JOINDER UNDER**  
**35 U.S.C. § 315(c) AND 37 C.F.R. § 42.22 AND § 42.122(b)**

## I. INTRODUCTION

Fujitsu Semiconductor Limited and Fujitsu Semiconductor America, Inc., (collectively “Fujitsu”) submit the present revised Motion for Joinder pursuant to the Order of September 16, 2014, (Paper 12) in IPR2014-00781 and (Paper 10) in IPR2014-00845, authorizing the filing of a revised Motion for Joinder. Fujitsu further submits that the present revised Motion for Joinder is timely filed within *five business days* from the date of the Order.

Fujitsu hereby moves for joinder of the present petition for *inter partes* review **IPR2014-00866** (the “FUJITSU IPR”) with **IPR2014-00818**, filed by Taiwan Semiconductor Manufacturing Company, LTD, and TSMC North America Corp. (the “TSMC IPR”).<sup>1</sup> The FUJITSU IPR is identical to the TSMC IPR in all substantive respects, includes identical exhibits to the TSMC IPR, and relies upon the same expert declarant as the TSMC IPR. TSMC does not oppose this motion.

## II. BACKGROUND AND RELATED PROCEEDINGS

The FUJITSU IPR and the TSMC IPR are among a family of *inter partes* review proceedings relating to seven patents<sup>2</sup> that are being asserted by Zond, LLC (“Zond”) against numerous defendants in the District of Massachusetts:

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<sup>1</sup> “TSMC” as used herein refers to Taiwan Semiconductor Manufacturing Company Limited and TSMC North America Corp., collectively.

<sup>2</sup> U.S. Patent Nos. 6,805,779; 6,806,652; 6,853,142; 7,147,759; 7,604,716; 7,808,184; and 7,811,421.

1:13-cv-11577-DPW (*Zond v. AMD, Inc., et al*); 1:13-cv-11581-DJC (*Zond v. Toshiba Am. Elec. Comp. Inc.*); 1:13-cv-11625-NMG (*Zond v. Renesas Elec. Corp.*); 1:13-cv-11634-WGY (*Zond v. Fujitsu and TSMC*); and 1:13-cv-11567-DJC (*Zond v. Gillette, Co.*).

In particular, a complaint in 1:13-cv-11634-WGY (*Zond v. Fujitsu and TSMC*) was first served on defendants Fujitsu and TSMC on July 9, 2013, and September 5, 2013, respectively. Accordingly, all petitions for *inter partes* review that have been filed by defendants TSMC and Fujitsu are timely as prescribed by 35 U.S.C. § 315(b).

On June 2, 2014, as clarified on June 3, 2014, in 1:13-cv-11634-WGY (*Zond v. Fujitsu and TSMC*), the Court entered an order to administratively close the case pending conclusion of *inter partes* reviews or until May 9, 2016, whichever shall occur first.

Currently, the family of *inter partes* review proceedings relating to the seven Zond patents (the “Zond IPRs”) consists of the following proceedings that involve TSMC and Fujitsu:<sup>3</sup>

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<sup>3</sup> Gillette Co. filed petitions for *inter partes* review of other patents asserted by Zond in 1:13-cv-11567-DJC (*Zond v. Gillette, Co.*), namely IPR2014-00477 and IPR2014-00479 (U.S. Patent No. 8,125,155); IPR2014-00580 and IPR2014-00726 (U.S. Patent No. 6,896,773); and IPR2014-00578 and IPR2014-00604 (U.S. Patent No. 6,896,775). Other Gillette filings are ongoing.

TSMC IPRs			Fujitsu IPRs		Claims
Patent	Ref	Filed	Ref	Filed	Claims in IPR
6805779	2014-00828	5/28/14	2014-00856	5/30/14	30-37, 39-40
	2014-00829	5/28/14	2014-00859	5/30/14	16, 28, 41, 42, 45, 46
	2014-00917	6/9/14	2014-00918	6/9/14	7, 9, 20, 21, 38, 44
6806652	2014-00861	5/30/14	2014-00864	5/30/14	18-34
6853142	2014-00818	5/27/14	2014-00866	5/30/14	1, 3-10, 12, 15, 17-20, 42
	2014-00821	5/27/14	2014-00863	5/30/14	2, 11, 13, 14, 16
	2014-00819	5/27/14	2014-00867	5/30/14	21, 24, 26-28, 31, 32, 37, 38
	2014-00827	5/28/14	2014-00865	5/30/14	22, 23, 25, 29, 30, 33-36, 39, 43
7147759	2014-00781	5/19/14	2014-00845	5/29/14	20, 21, 34-36, 38, 39, 47, 49
	2014-00782	5/19/14	2014-00850	5/29/14	22-33, 37, 46, 48, 50
7604716	2014-00807	5/23/14	2014-00846	5/29/14	14-18, 25-32
	2014-00808	5/23/14	2014-00849	5/29/14	19-24
7808184	2014-00799	5/22/14	2014-00855	5/30/14	1-5, 11-15
	2014-00803	5/22/14	2014-00858	5/30/14	6-10, 16-20
7811421	2014-00800	5/22/14	2014-00844	5/29/14	1, 2, 8, 10-13, 15-17, 22-25, 27-30, 33, 34, 38, 39, 42, 43, 46-48
	2014-00802	5/22/14	2014-00848	5/29/14	9, 14, 21, 26, 35, 37
	2014-00805	5/23/14	2014-00851	5/30/14	3-7, 18-20, 31, 32, 36, 40, 41, 44, 45

In addition to the present Motion for Joinder, Fujitsu is presently filing Motions for Joinder of other Zond IPR petitions with the corresponding petitions filed by TSMC, subject to the same conditions sought by this motion. TSMC does not oppose the Fujitsu motions.

### **III. DISCUSSION**

If the Director institutes an *inter partes* review, Fujitsu respectfully requests that the Board exercise its discretion to grant joinder of the FUJITSU IPR and TSMC IPR proceedings pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b). In support of this motion, Fujitsu proposes consolidated filings and other procedural accommodations designed to streamline the proceedings.

#### **1. Reasons Why Joinder Is Appropriate**

Joinder is appropriate in this case because it is the most expedient way to secure the just, speedy, and inexpensive resolution of the related proceedings. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b). Intentionally, the FUJITSU IPR is substantively identical to the corresponding TSMC IPR in an effort to avoid multiplication of issues before the Board. Given the duplicative nature of these petitions, joinder of the related proceedings is appropriate. As discussed below,

Fujitsu will agree to consolidated filings and discovery, and procedural concessions, which TSMC does not oppose and which do not prejudice Zond.

**a. Substantively Identical Petitions**

Fujitsu represents that the FUJITSU IPR is identical to the TSMC IPR in all substantive respects. It includes identical grounds, analysis, and exhibits and relies upon the same expert declarant and declaration as the TSMC IPR. Accordingly, if instituted, maintaining the FUJITSU IPR proceeding separate from that of the TSMC IPR would entail needless duplication of effort.

**b. Consolidated Filings and Discovery**

Because the grounds of unpatentability in the FUJITSU IPR and TSMC IPR are the same, the case is amenable to consolidated filings. Fujitsu will agree to consolidated filings for all substantive papers in the proceeding (e.g., Reply to the Patent Owner's Response, Opposition to Motion to Amend, Motion for Observation on Cross Examination Testimony of a Reply Witness, Motion to Exclude Evidence, Opposition to Motion to Exclude Evidence and Reply). Specifically, Fujitsu will agree to incorporate its filings with those of TSMC in a consolidated filing, subject to the ordinary rules for one party on page limits. TSMC and Fujitsu will be jointly responsible for the consolidated filings.

Fujitsu agrees not to be permitted any arguments separate from those advanced by Fujitsu and TSMC in the consolidated filings. These limitations avoid lengthy and duplicative briefing.

Consolidated discovery is also appropriate given that Fujitsu and TSMC are using the same expert declarant who has submitted the same, identical declaration in the two proceedings. Fujitsu and TSMC will designate an attorney to conduct the cross-examination of any given witness produced by Zond and the redirect of any given witness produced by Fujitsu or TSMC within the time frame normally allotted by the rules for one party. Fujitsu and TSMC will not receive any separate cross-examination or redirect time.

Fujitsu will agree to the foregoing conditions regarding consolidated filings and discovery even in the event other IPRs filed by other, third-party petitioners are joined with the TSMC IPR.

**c. No New Grounds of Unpatentability**

The FUJITSU IPR raises no new grounds of unpatentability from those of the TSMC IPR because, in fact, the petitions are identical.

**d. No Impact on IPR Trial Schedule**

The small difference between the filing date of the FUJITSU IPR and the TSMC IPR is without consequence should the proceedings be joined. The trial schedule for the TSMC IPR would not need to be delayed to effect joinder based

on Zond's preliminary response and the later-filed FUJITSU IPR. The joint proceeding would allow the Board and parties to focus on the merits in one consolidated proceeding without unnecessary duplication of effort, and in a timely manner.

**e. Briefing and Discovery Will Be Simplified**

Joinder will simplify briefing and discovery because Fujitsu seeks an order similar to that issued in *Motorola Mobility LLC v. Softview LLC*, IPR2013-00256 (PTAB June 20, 2013) (Paper 10). As discussed above, Fujitsu and TSMC will engage in consolidated filings and discovery, which will simplify the briefing and discovery process.

**f. No Prejudice to Zond if Proceedings Are Joined**

Fujitsu proposes joinder to streamline the proceedings and reduce the costs and burdens on the parties. Fujitsu believes joinder will achieve these goals for several reasons. First, joinder will most certainly decrease the number of papers the parties must file, by eliminating a duplicative proceeding. Second, joinder will also reduce by half the time and expense for depositions and other discovery required in separate proceedings. Third, joinder creates case management efficiencies for the Board and parties without any prejudice to Zond.



#### **IV. PROPOSED ORDER**

Petitioner proposes a joinder order for consideration by the Board as follows, which TSMC does not oppose:

- If review is instituted on any ground in the TSMC IPR, the FUJITSU IPR will be instituted and will be joined with the TSMC IPR on the same grounds. Grounds not instituted because the TSMC IPR failed to establish a reasonable likelihood of prevailing, if any, will be similarly denied in the FUJITSU IPR.
- The scheduling order for the TSMC IPR will apply for the joined proceeding.
- Throughout the proceeding, TSMC and Fujitsu will file papers as consolidated filings, except for motions that do not involve the other party, in accordance with the Board's established rules regarding page limits. So long as they both continue to participate in the merged proceeding, TSMC and Fujitsu will identify each such filing as a Consolidated Filing and will be responsible for completing all consolidated filings.
- TSMC and Fujitsu will designate an attorney to conduct the cross examination of any given witness produced by Zond and the redirect of any given witness produced by TSMC or Fujitsu within the time

frame normally allotted by the rules for one party. TSMC and Fujitsu will not receive any separate cross-examination or redirect time.

- Zond will conduct any cross examination of any given witness jointly produced by TSMC or Fujitsu and the redirect of any given witness produced by Zond within the time frame normally allotted by the rules for one cross-examination or redirect examination.

## V. CONCLUSION

For the foregoing reasons, if the Director institutes *inter partes* review, Fujitsu respectfully requests that the Board grant joinder of the FUJITSU IPR and TSMC IPR proceedings.

Respectfully submitted,

Date: September 22, 2014

/David M. O'Dell/

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), this is to certify that I caused to be served a true and correct copy of the foregoing "PETITIONER'S REVISED MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)" as detailed below:

*Date of service* September 22, 2014

*Manner of service* Email: gonsalves@gonsalveslawfirm.com;  
bbarker@chsblaw.com; kurt@rauschenbach.com

*Documents served* PETITIONER'S REVISED MOTION FOR JOINDER  
UNDER 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND  
42.122(b)

*Persons Served* Dr. Gregory J. Gonsalves  
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